

The Seal of the United States Supreme Court is located at the bottom of the page. It features a shield with a scale of justice, a sword, and a laurel wreath. The shield is flanked by two figures, and the words "UNITED STATES SUPREME COURT" are inscribed around the border. The date "MDCCCLXXXIII" is at the bottom.

No. 11-1918 RS

The case became ready for our decision February 5, 2013, the last date for filing a written argument.

Findings of Fact

1. Rasse is an individual residing in Marshall, Missouri.
2. In July 2005, Rasse purchased cedar shingles, for personal use, in the amount of \$7,920 from a company located in Canada.
3. The shingles were shipped to Rasse in Marshall, Missouri, by an importer and broker. Neither the importer nor broker was registered with the Director for remitting sales tax or use tax in 2005.
4. Neither the Canadian company, nor the importer, nor the broker paid sales tax or use tax on the cedar shingles.
5. Rasse did not file a use tax return and did not pay use tax on the cedar shingles by April 17, 2006 for tax year 2005.
6. On April 1, 2011, regarding Rasse's purchase of cedar shingles, the Director assessed the following: \$334.62 in use tax, \$83.66 in additions to tax, and \$105.89 in statutory interest for a total amount of \$524.17.
7. On June 29, 2011, Rasse made payment of \$524.17 under protest for the aforementioned assessments of use tax, additions to tax, and statutory interest, which was denied by the Director.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.¹ Rasse has the burden of proving he is not liable for the amounts the Director assessed.² Our duty in a tax case is not merely to review the Director's decision, but to find the facts and to

¹Section 621.050.1. Statutory references are to RSMo 2000, unless otherwise noted.

²Sections 136.300.1 and 621.050.2.

determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.³

I. Use Tax

Section 144.610 provides for a compensating use tax in Missouri as follows:

1. A tax is imposed for the privilege of storing, using or consuming within this state any article of tangible personal property, purchased on or after the effective date of sections 144.600 to 144.745 in an amount equivalent to the percentage imposed on the sales price in the sales tax law in section 144.020. This tax does not apply with respect to the storage, use or consumption of any article of tangible personal property purchased, produced or manufactured outside this state until the transportation of the article has finally come to rest within this state or until the article has become commingled with the general mass of property of this state.
2. Every person storing, using or consuming in this state tangible personal property is liable for the tax imposed by this law, and the liability shall not be extinguished until the tax is paid to this state[.]

Section 144.605 defines “use” for purposes of the use tax imposed by § 144.610:

- (13) “**Use**”, the exercise of any right or power over tangible personal property incident to the ownership or control of that property, except that it does not include the temporary storage of property in this state for subsequent use outside the state, or the sale of the property in the regular course of business[.]

Unlike sales tax, which is imposed on the sale of an item in Missouri, the compensating use tax is levied on the privilege of using, storing, or consuming an item within Missouri. The purpose of the use tax is to complement, supplement, and protect the sales tax by creating “equality of taxation of purchases or use of property purchased outside the state which cannot be reached as sales because of the commerce clause of the federal constitution.”⁴ This purpose is achieved by imposing an equivalent levy for the privilege of using property in Missouri that was

³*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁴*Farm and Home Savings Ass’n v. Spradling*, 538 S.W.2d 313, 317 (Mo. 1976).

purchased outside of Missouri as would have been imposed upon the sale of the property in Missouri.

The amount of use tax assessed by the Director is not in dispute. The only question is whether Rasse is subject to use tax. Rasse purchased and took ownership of the cedar shingles for his personal use in Missouri. Therefore, he is liable for use tax as assessed by the Director.

II. Additions to Tax

Section 144.665.1 provides for additions to tax as follows:

In case of failure to file any return required under sections 144.600 to 144.745 on or before the date prescribed therefor (determined with regard to any extension of time for making a return), unless it is shown that such failure is due to reasonable cause and not the result of willful neglect, evasion, or fraudulent intent, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is not for more than one month, with an additional five percent for each additional month, or fraction thereof, during which such failure continues, not exceeding twenty-five percent in the aggregate[.]

Section 144.655 prescribes the date for filing a use tax return:

4. Except as provided in subsection 5 of this section, ***every person purchasing tangible personal property, the storage, use or consumption*** of which is subject to the tax levied by sections 144.600 to 144.748, who has not paid the tax due to a vendor registered in accordance with the provisions of section 144.650, ***shall file with the director of revenue a return for the preceding reporting period*** in the form and manner that the director of revenue prescribes, showing the total sales price of the tangible property purchased during the preceding reporting period[.]...For purposes of this subsection, ***the reporting period shall be determined by the director of revenue*** and may be a calendar quarter or a calendar year. ***Annual returns and payments required by the director pursuant to this subsection shall be due on or before April fifteenth of the year for the preceding calendar year***[.]

5. Any person purchasing tangible personal property subject to the taxes imposed by sections 144.600 to 144.748 shall not be required to file a use tax return with the director of revenue if such

purchases on which such taxes were not paid do not exceed in the aggregate two thousand dollars in any calendar year.

Regulation 12 CSR 10-103.250(2) provides use tax responsibilities for purchasers:

(B) If a taxpayer's out-of-state taxable purchases on which tax has not been paid are less than two thousand dollars (\$2,000) in a calendar year, the taxpayer is not required to file a use tax return. This is an exclusion from filing, but not a two thousand dollar (\$2,000) use tax exemption. Therefore, ***if the annual taxable purchases on which tax has not been paid equal or exceed two thousand dollars (\$2,000) the taxpayer must report and pay on the total taxable purchases (including the first two thousand dollars (\$2,000) of taxable purchases)***. Any amount of tax reported by the taxpayer must be remitted with the return.

The additions to tax provided for above are in addition to any interest required to be paid on the tax.⁵ The amount of additions to tax assessed by the Director is not in dispute. The only question is whether Rasse is liable for the additions to tax. Rasse failed to file a use tax return by April 17, 2006,⁶ and his out-of-state purchase exceeded \$2,000. Therefore, he is liable for additions to tax as assessed by the Director.

III. Interest on Tax

Section 144.170 provides for interest on tax as follows:

All taxes not paid to the director of revenue by the person required to remit the same on the date when the same becomes due and payable to the director of revenue shall bear interest at the rate determined by section 32.065, RSMo, from and after such date until paid.

The amount of statutory interest assessed by the Director is not in dispute. The only question is whether Rasse is liable for the interest. Rasse failed to pay his use tax obligation on the purchase of cedar shingles by the due date of April 17, 2006. Therefore, he is liable for statutory interest as assessed by the Director.

⁵Section 144.665.3.

⁶ April 15, 2006 fell on a Saturday, thus extending the due date to April 17, 2006.

Summary

Rasse is liable for \$334.62 in use tax, \$83.66 in additions to tax, and \$105.89 in statutory interest for tax year 2005. Therefore, he is not entitled to a refund of these amounts paid under protest.

SO ORDERED on April 23, 2013.

/s/ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner